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October 22, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

RE: CC Docket No. 97-21, CC Docket No. 96-45, Implementation Plan by the Universal Service Administrative Company Pursuant to the Commission's October 8, 1999 Order Regarding Adjustments to Commitments of Discount Funding Made to Certain Schools and Libraries

Dear Ms. Roman Salas:

The Universal Service Administrative Company ("USAC"), in its capacity as administrator of the Schools and Libraries Universal Service Support Mechanism (hereafter referred to as "the Schools and Libraries Program"), submits the following implementation plan pursuant to the Commission's October 8, 1999 Order in the above-referenced dockets regarding adjustments to commitments of discount funding made to certain schools and libraries.¹

Background

The Schools and Libraries Division ("SLD") of USAC, through standard audit and review processes, discovered that it had committed discount funding to a small number of Schools and Libraries Program Year One applicants which failed to satisfy certain requirements of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. In the Commitment Adjustment Order, the Commission directed USAC to adjust certain commitments of discount funding that were made to schools and libraries because the funding of such applications would violate a federal statute. Specifically, the Commission ordered USAC to adjust such commitments by: (1) canceling all or any part of a commitment to fund discounts for ineligible services or the provision of telecommunications services by non-telecommunications carriers; and (2) denying payment of any requests by providers for compensation for discounts provided on such services. The Commission concluded that, under the circumstances, it must "seek repayment of

¹ See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Order, FCC 99-291 (rel. October 8, 1999) (the "Commitment Adjustment Order").

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erroneously disbursed funds," and therefore directed USAC "to adjust funding commitments made to schools and libraries where disbursement of funds associated with those commitments would result in a violation of a federal statute." Commitment Adjustment Order ¶ 7. In the Commitment Adjustment Order, the Commission directed USAC "to submit an implementation plan, for Commission approval, outlining its proposals for pursuing collection of any actual discount funding that has been awarded to service providers serving such applicants," within 14 days of the release of the Commitment Adjustment Order. *Id.* ¶¶ 1, 11.

USAC's Proposed Implementation Plan

The Commission concluded that USAC must "seek repayment from service providers rather than schools and libraries because, unlike schools and libraries that receive discounted services, service providers actually receive disbursements of funds" from the Schools and Libraries Program. *Id.* ¶ 8. The Commission therefore directed USAC "to adjust such commitments and seek repayment of funds by: (1) canceling all or any part of a commitment to fund discounts for ineligible services or the provision of telecommunications services by non-telecommunications carriers; and (2) denying payment of any requests by service providers for compensation for discounts provided on such services." *Id.* The Commission further ordered USAC "to present an implementation plan identifying the specific amounts of schools and libraries discount funds that were disbursed in error and proposing methods for their collection" and to submit proposals "for collecting those debts and identifying those instances where an offset would be feasible" and lawful. *Id.* ¶ 10.

USAC has identified funding commitments made to 12 service providers serving 33 applicants on Schools and Libraries Program Year One² funding requests that included charges for services that were in fact ineligible pursuant to Section 254(h) of the Telecommunications Act of 1996. The funding commitments for the cost of these ineligible services totaled \$966,000. USAC has actually paid \$435,600 in error to service providers. USAC also has identified funding commitments made to 51 service providers serving 79 applicants on Schools and Libraries Program Year One funding requests for telecommunications services that were to be provided by service providers that were in fact ineligible. As of the date of this filing, these erroneous funding commitments totaled \$1,322,072, of which \$590,395 has been paid by USAC. *See id.* ¶ 4 n.10.³

USAC proposes the procedures set forth below to implement the Commitment Adjustment Order. These procedures is illustrated graphically in the flow chart attached as an exhibit to this document.

² Pursuant to Commission order, Schools and Libraries Program Year One ("Year One") spanned the eighteen months ending on June 30, 1999. Year Two runs from July 1, 1999 to June 30, 2000.

³ USAC previously had identified commitments to ineligible service providers totaling \$1.7 million as of September 27, 1999, but the amount at issue has been reduced as a result of additional inquiries by and information provided to USAC.

1. The first step is to determine the "adjustment amount." This amount equals the funds that were committed in error. The adjustment amount may equal the entire funding request or only part of the funding request.

2. The next step is to determine whether USAC actually paid any funds in error. Payment in error is computed first by determining the valid commitment amount (if any), which is the total commitment amount less the adjustment amount. If the valid commitment amount is greater than or equal to the entire amount paid out by USAC, then no funds were paid in error. If, however, the valid commitment amount is less than the amount paid by USAC, then the excess of the amount paid over the valid commitment amount is the amount that was paid in error. The amount paid in error is the amount that must be recovered, either through adjustments to other commitments or through cash recovery. If no money was paid in error, then SLD will simply adjust the Year One funding commitment, reducing it by the adjustment amount, and will issue a new Funding Commitment Decisions Letter to both the applicant and the service provider, reflecting the adjustment. Of the 33 applicants with commitments for ineligible services, in only three of those cases have amounts been paid in error. Of the 80 applicants with commitments for telecommunications services to be provided by ineligible telecommunications providers, in 19 of those cases amounts have been paid in error.

3. If funds were disbursed in error, then SLD will determine whether it must seek repayment in cash from the service provider or whether the service provider will have an "offset" option based on additional Year One or Year Two funding commitments issued by SLD. SLD will issue a letter to the service provider to which the funds were wrongly paid. In that letter, SLD will set forth the original funding commitment, the adjustment amount, and the amount paid in error. If there are no other unpaid funding commitments involving the applicant and service provider pair in question, then this letter will seek cash repayment of the erroneously committed funds by the service provider. If there are other unpaid commitments made to the same applicant and service provider pair as involved in the original erroneous commitment (in either Year One or Year Two), then the letter will give the service provider two options: to repay in cash the amount paid in error, or to have that amount offset by reductions in other valid commitments. To determine whether there are other valid commitments available as an offset for funds paid in error, SLD first will look to "additional" Year One funding commitments; these include any meritorious appeals and the money extended by the Commission's *Tenth Order on Reconsideration*.⁴ If the offset option is available, then the SLD letter will ask the service provider to choose among the potential offset options and/or the cash repayment option. The sum of offsets and cash repayment must equal the adjustment amount.

⁴ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Tenth Order on Reconsideration (rel. April 2, 1999).

4. If the service provider chooses to offset unpaid commitments on other Year One funding commitment requests against the amount committed in error, then SLD will issue a new Funding Commitment Decisions Letter to the service provider and the applicant reflecting the new commitment amount(s) and an explanation for the reduction. Similarly, if the service provider chooses to offset Year Two funding requests, then SLD will reduce those Year Two commitments as necessary, issue a new Funding Commitment Decisions Letter, and include an explanation of the basis for the reduction. If any additional funds are available for commitment after the reduction, then SLD will issue a new Funding Commitment Decisions Letter with an explanation of the reason for the new commitments and the amount of the offset.

5. If the adjusted commitment amounts are insufficient to cover the entire amount of the erroneous Year One commitment, then SLD will seek repayment by the service provider of the funds that were erroneously disbursed. In the Commitment Adjustment Order, the Commission authorized USAC "to pursue collection of any disbursements that have been awarded to service providers" serving applicants whose funding commitments are subject to the Commitment Adjustment Order. *Id.* ¶ 9. USAC has actually paid in error \$435,600 for ineligible services to three service providers serving three applicants. USAC has actually paid \$590,395 in error to 15 ineligible service providers. If all of these amounts with respect to a particular service provider will not be offset by adjustments to other commitments, USAC proposes the following procedure to recover these erroneously disbursed funds: USAC will send a letter to the service provider seeking return of funds paid in error by USAC.⁵ If the service provider does not remit the funds in response to USAC's initial request, then USAC will make a second request for payment. If the service provider does not return the funds in question after this second request, then USAC proposes that it refer the matter to the FCC, which could then take whatever enforcement action it deemed appropriate under the circumstances.

6. Applicants which received Funding Commitment Decisions Letters in Year One for requests that have now been determined not to have been consistent with statutory requirements may have relied on those Year One commitments as evidence of program rule compliance and submitted requests for discounts on those same services with the same service providers in Year Two before they received notice of the commitment adjustment. In light of the fact that these Year Two requests do not comply with Schools and Libraries Program rules, they cannot be approved, but SLD proposes that some flexibility be provided to avoid unfairly disadvantaging applicants which relied on Year One funding commitments. Specifically, in the case of ineligible telecommunications providers in Year One for which requests have been submitted in Year Two, SLD proposes to allow applicants to select a new, eligible service provider (after following all applicable posting and competitive bidding procedures). In the case of ineligible services, SLD proposes to consult with applicants to modify FRNs to remove the costs of ineligible services. Alternatively, or in addition to the foregoing, SLD proposes that it should be allowed to permit the substitution of alternative eligible services that meet the applicant's needs, provided there is no increase in the total funding request and provided that the alternative service(s) sought is within the scope of the original procurement.

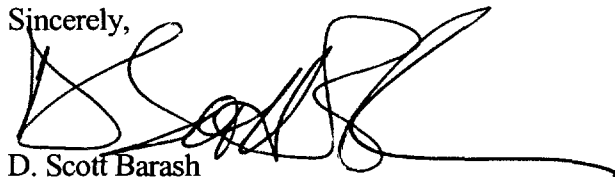
⁵ USAC proposes to net any funds not repaid by a service provider against any other Universal Service Fund payments that may be due to that service provider.

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Conclusion

USAC sincerely regrets the disruption to Schools and Libraries Program applicants and service providers caused by its erroneous commitment of funds. USAC believes that the foregoing plan will implement the Commission's October 8, 1999 Commitment Adjustment Order efficiently and equitably, with a minimum of further disruption to applicants and service providers. USAC will be happy to discuss the proposed plan or to provide any additional information at the Commission's request.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Scott Barash', with a long horizontal line extending to the right.

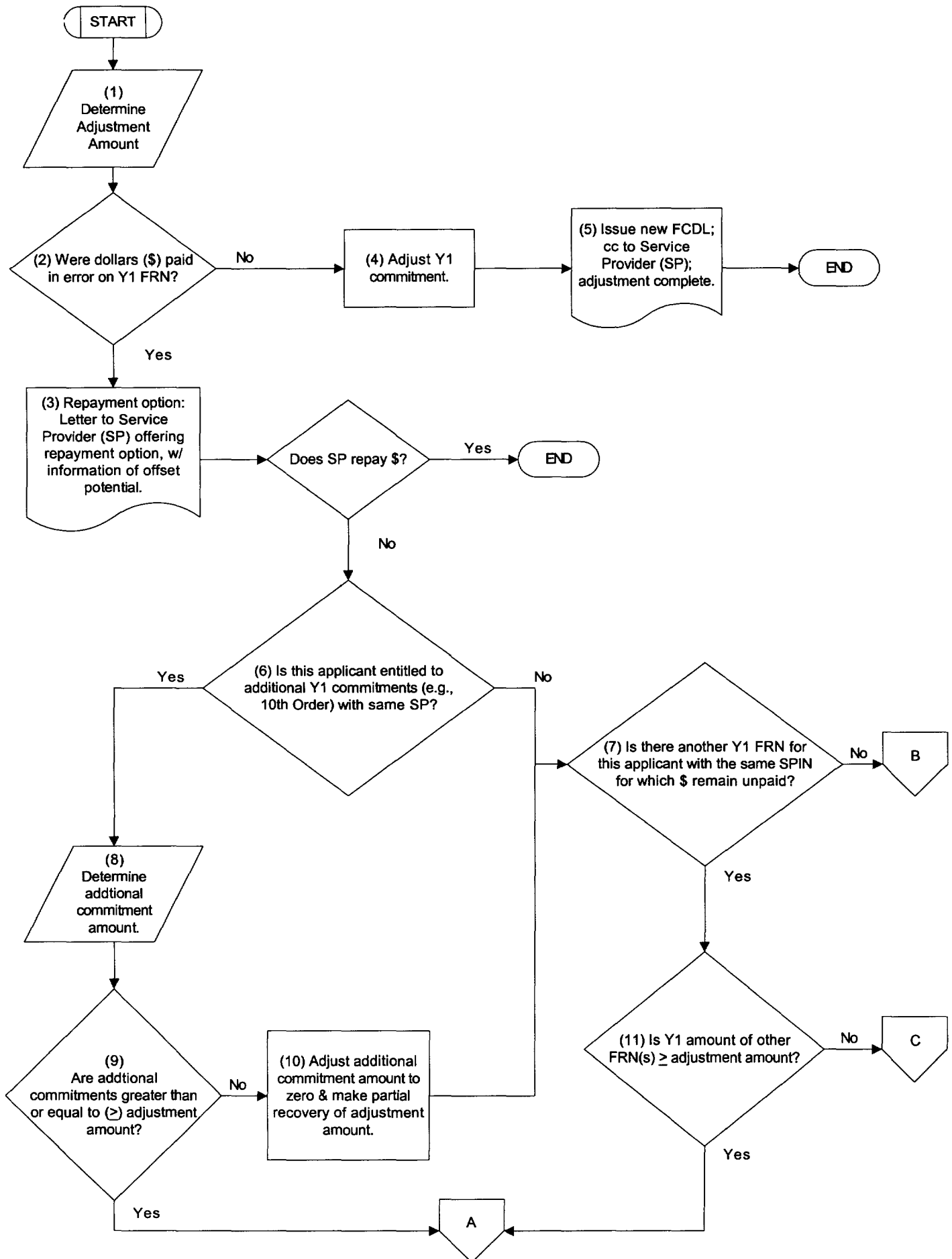
D. Scott Barash
Vice President and General Counsel

Enclosure

Cc: Irene Flannery
Lisa Zaina
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Kyle Dixon
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Sarah Whitesell

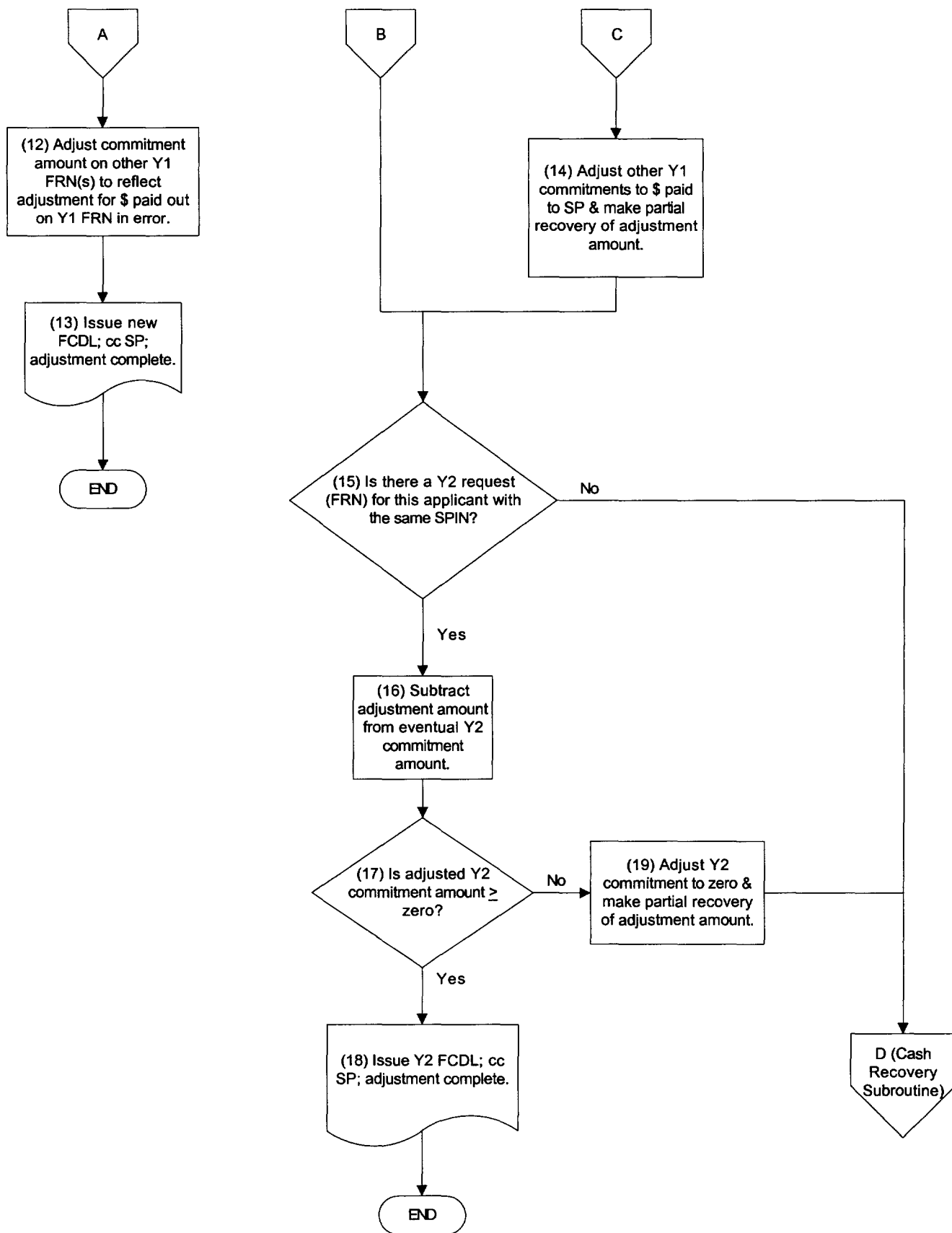
Commitment Adjustment Process

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Commitment Adjustment Process

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Commitment Adjustment Process

Cash Recovery

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